IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 5212 of 2007(U)

OPELE.5/2005 of MUNI-MAGI COURT, DEVIKULAM

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PETITIONERS:

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1. RAJEEV RAGHAVAN, PARACKAL,
   ELKUNNU KARA, VELLATHOOVAL P.O.

2. JOHN, SURYAPALLY HOUSE,
   CHITHIRAPURAM P.O., IDUKKI.

3. PRADEEPA. P.S., D/O.P.N.SOMAN,
   PONNANIKKATTU HOUSE, CHITHIRAPURAM P.O.,
   PALLIVASAL, IDUKKI.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS:

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1. TULASI BHASI KRISHNAN, D/O.KRISHNAN,
   KAITHAYANICKAL HOUSE, ANCHAL P.O.,
   DEVIKULAM.

2. AJITHA PRAMOD, W/O.PRAMOD,
   PONNANIKKATTU HOUSE, CHITIRAPURAM P.O.,
   PALLIVASAL, IDUKKI.

BY ADV. SRI.K.JAJU BABU
SRI.AJEY THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5212 of 2007(U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE O.P.(ELE).NO.5/05 OF THE MUNSIFF'S COURT, DEVIKULAM.

EXT.P2: COPY OF THE WITNESS SCHEDULE PRODUCED BY THE RESPONDENT IN O.P. (ELE.)NO.5/2005.

EXT.P3: COPY OF THE ORDER DATED 10.4.2006 IN I.A.NO.696/2006 IN O.P.(ELE)5/05 OF THE MUNSIFF COURT, DEVIKULAM.

EXT.P4: COPY OF THE I.A.NO.122/07 FILED BY THE 1ST RESPONDENT BEFORE THE MUNSIFF'S COURT, DEVIKULAM.

EXT.P5: COPY OF THE ORDER DATED 24.1.2007 IN I.A.NO.122/07 IN O.P.(ELE).5/05 OF THE MUNSIFF'S COURT, DEVIKULAM.

RESPONDENT'S EXHIBITS:

EXT.R1(a): COPY OF AFFIDAVIT IN SUPPORT OF THE ELECTION PETITION FILED BY THE RESPONDENT BEFORE THE MUNSIFF COURT, DEVIKULAM IN ELECTION PETITION 5/05 DATED 24.10.05.

EXT.R1(b): COPY OF THE JUDGMENT DATED 4.1.2007 IN W.P.(C).NO.30629/2006 OF THIS HON'BLE COURT.

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BKN // TRUE COPY//

P.A TO JUDGE.

M.N.KRISHNAN, J
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W.P.C.NO. 5212 OF 2007
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Dated this the 29th Day of June, 2007.
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J U D G M E N T

The Writ Petition is filed challenging Ext.P5 order passed by the learned Munsiff, Devikulam in O.P.(Ele). 5/2005. As per the said order, the learned Munsiff has directed to issue summons to witness 45 to 47 to produce documents and give evidence and also directed the 48th witness to produce documents when trial commences. The Writ Petitioners are not party to the election petition but they are the voters of the constituency. The election is challenged mainly on the basis of double voting as well as on the irregularity of the postal ballots. It is a crystal clear principle that the secrecy of the ballot has to be maintained for the preservation of democracy. But when an election petition reaches the court and the ground alleged is double voting, necessarily one has to find out whether a person had voted in two places which according to law is illegal. But in order to ensure the safeguardness first of all by production of voters list, it has to be established that when a person with the same name and description figures in two different wards or constituency, as the case may be, then the next point to be satisfied is that it is the very same person

and they are not two different individuals. When prima facie from the materials available, the conscience of the court is satisfied that there is the name of a person figuring in two places and his identity is the same, then, necessarily, the court has to get the ballot paper verify and find out the issue. So with this in mind, the court below should proceed and should not open the secret ballot at the very first instance itself and there after proceed to consider the matter. So far as the ballot paper is concerned, it is to be stated that the presiding officer may prima facie satisfy himself that there is some irregularity and when he is convinced about the irregularity, he may call for the same and then examine the parties and necessary witnesses. So the order passed by the learned Munsiff is further clarified to this extend and trial be proceeded in accordance with law, after affording equal opportunity to both parties. Being an election petition, learned Munsiff should bestow his attention for expeditious disposal.

The Writ Petition is disposed of accordingly.

M.N.KRISHNAN
JUDGE

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